

01-2004-A

ALADVERSARY

PLAINTIFF: Patrick And Keri Weil

DEBTOR: Patrick And Keri Weil

DEFENDANT: America'S Servicing Co.,

JUDGE: Hon. M. McManus

FILED 01/03/01 - 10:25 AM

CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION gfas

DIANA J. CAVANAUGH (S.B. #148582)  
Attorney at Law  
1555 River Park Dr., Ste. 206  
Sacramento, CA 95815  
(916) 921-9900

Attorney for Debtors  
PATRICK RAY WEIL SR. and  
KERI LYNN WEIL

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re:

Case No. 00-23881-A-13

PATRICK RAY WEIL SR.,  
KERI LYNN WEIL,  
  
Debtors.

Adv. Proc. No.

COMPLAINT TO DETERMINE  
VALUE AND EXTENT OF LIEN

PATRICK RAY WEIL SR.,  
KERI LYNN WEIL,

Plaintiffs,

vs.

AMERICA'S SERVICING CO.,

Defendant.

Now come Plaintiffs, PATRICK RAY WEIL SR. and KERI LYNN  
WEIL, and allege as follows:

1. Plaintiffs filed an original petition for relief  
under Chapter 13 of the Bankruptcy Code on April 3, 2000.

2. This adversary proceeding is brought in connection  
with Plaintiff's case under Chapter 13 of Title 11, case number

1 00-23881-A-13, now pending before this Court.

2 3. This Court has jurisdiction over this proceeding  
3 pursuant to 28 U.S.C. Sections 157 and 1334. This is a core  
4 proceeding pursuant to 28 U.S.C. Sections 157(b)(2)(K) and (L).

5 4. In Debtors' bankruptcy schedules, they list a  
6 residence of debtors, commonly known as 7753 Southland Ct.,  
7 Sacramento, California. This residence was valued at  
8 \$98,000.00 in the Order Confirming Plan filed 6/15/00, which is  
9 attached as "Exhibit A".

10 5. There exists a first deed of trust recorded and  
11 secured by a promissory note in favor of Wells Fargo Home  
12 Mortgage, formerly Norwest Mortgage. The amount owing to Wells  
13 Fargo Home Mortgage is \$110,221.02. The proof of claim filed  
14 by debtors on behalf of Wells Fargo Home Mortgage is attached  
15 as "Exhibit B".

16 6. With a fair market value of \$98,000.00, there is no  
17 equity value in excess of the first deed of trust.

18 7. Defendant, America's Servicing Co., holds a second  
19 deed of trust recorded against Debtors' residence purporting to  
20 secure a promissory note with a total balance of \$25,732.46 as  
21 per the claim filed by that creditor. This claim was allowed  
22 as an unsecured claim in the Order Confirming Plan.

23 8. As there is no equity value in the Debtors' residence  
24 and above the first deed of trust, the deed of trust held by  
25 America's Servicing Co. is wholly unsecured and not secured by  
26

1 the Debtors' residence and has no value.

2 WHEREFORE, Debtors pray for relief as follows:

3 a. That the Court issue an Order finding that the deed  
4 of trust recorded by America's Servicing Co. has no further  
5 force and effect as a secured lien against the Debtors'  
6 residential real property, so long as the Debtors receive a  
7 discharge in their Chapter 13 case and their case is not  
8 dismissed; and

9 b. That Debtors have such other and further relief as  
10 may be deemed just.

11 Dated: January 2, 2001

12 By:

13 Diana J. Cavanaugh  
14 DIANA J. CAVANAUGH  
15 Attorney at law  
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# ATTORNEY COPY

ORIGINAL FILED

JUN 15 2000

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In Re: ) Case No.: 00-23881-A-13  
)  
Weil Sr., Patrick Ray, )  
Weil, Keri Lynn, )  
)  
Debtors. )

*CT*  
**ORDER CONFIRMING PLAN, VALUING COLLATERAL ~~AND AVOIDING LIENS~~**

The Chapter 13 Plan of the above-named debtor(s) has been transmitted to all creditors, and it has been determined after notice and opportunity for a hearing that the debtor(s) plan satisfies the requirements of 11 U.S.C. §1325.

Therefore, IT IS ORDERED that the plan is confirmed.

IT IS FURTHER ORDERED that:

1. The debtor shall immediately notify, in writing, the Clerk of the United States Bankruptcy Court and the trustee of any change in the debtor's address;

2. The debtor shall immediately notify the trustee in writing of any termination, reduction of, or other change in the employment of the debtor; and

3. The debtor shall appear in court whenever notified to do so by the court.

IT IS FURTHER ORDERED that the attorney fees for the debtor's attorney in the full amount of \$ 1750.00 are approved, \$ 390.00 of which was paid prior to the filing of the petition. The balance of \$ 1360.00, provided that the attorney and debtor have executed and filed a Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall be paid by the trustee from plan payments at the rate specified in the Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases.

IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. §1323, the plan is amended as follows: N/A

IT IS FURTHER ORDERED that the motion to value the collateral of America's Servicing Co. is granted. The replacement value of the collateral of such creditor is

ENTERED ON DOCKET

JUN 16 2000

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

determined to be \$ 98,000.00 which shall be allowed as a  
general unsecured claim.

DATED: JUN 14 2000

BY THE COURT

DAVID E. RUSSELL

**ORIGINAL SIGNED**

UNITED STATES BANKRUPTCY JUDGE

Approved by the Chapter 13  
Trustee as to form.

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF CALIFORNIA		ORIGINAL FILED PROOF OF CLAIM
Name of Debtor <b>WEIL SR., PATRICK RAY AND KERI LYNN</b>	Case Number <b>00-23881-A-13</b>	<div style="text-align: center; font-size: 1.2em;">00 AUG -2 PM 4: 02</div> <div style="text-align: center; font-size: 0.8em;">CLERK, U.S. BANKRUPTCY CT. EASTERN DIST. OF CA. SACRAMENTO, CA.</div> <div style="text-align: center; font-size: 0.7em; margin-top: 20px;">THIS SPACE IS FOR COURT USE ONLY</div>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): (assignor of Norwest Mortgage) <b>WELLS FARGO HOME MORTGAGE</b>	<ul style="list-style-type: none"> <li>Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.</li> <li>Check box if you have never received any notices from the bankruptcy court in this case.</li> <li>Check box if the address differs from the address on the envelope sent to you by the court.</li> </ul>	
Name and address where notices should be sent: <b>P.O. BOX 7190 PASADENA CA 91109</b>	Telephone number: <b>800-288-3212</b>	
Account or other number by which creditor identifies debtor: <b>1235425</b>	Check here if this claim <ul style="list-style-type: none"> <li>replaces</li> <li>amends a previously filed claim, dated: _____</li> </ul>	
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <b>1. Basis for Claim</b> <ul style="list-style-type: none"> <li>Goods sold</li> <li>Services performed</li> <li><input checked="" type="checkbox"/> Money loaned</li> <li>Personal injury/wrongful death</li> <li>Taxes</li> <li>Other _____</li> </ul> </div> <div style="width: 50%;"> <ul style="list-style-type: none"> <li>Retiree benefits as defined in 11 U.S.C. § 1114(a)</li> <li>Wages, salaries, and compensation (Fill out below)</li> </ul>           Your SS#: _____            Unpaid compensation for services performed            from _____ to _____  <div style="text-align: center;">(date) (date)</div> </div> </div>		
<b>2. Date debt was incurred:</b> <b>7/30/93</b>	<b>3. If court judgment, date obtained:</b>	
<b>4. Total Amount of Claim at Time Case Filed:</b> <u>\$ 110,221.02</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <b>7753 Southland Ct. Sacramento, CA</b> <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: <u>\$ 98,000.00</u> Amount of arrearage and other charges at time case filed included in secured claim, if any <u>\$ 1,065.46</u>	<b>6. Unsecured Priority Claim.</b> <ul style="list-style-type: none"> <li>Check this box if you have an unsecured priority claim</li> </ul> Amount entitled to priority \$ ____ Specify the priority of the claim: <ul style="list-style-type: none"> <li>Wages, salaries, or commissions (up to \$4,300)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3)</li> <li>Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4)</li> <li>Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6)</li> <li>Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7)</li> <li>Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8)</li> <li>Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).</li> </ul> <small>*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date <b>8/2/00</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>Diana J. Curran Attorney for Debtors</b>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

Debtors file this claim for Creditor pursuant to General Order 6 (F) as this creditor has failed to file a claim prior to the bar date **EXHIBIT "B"**

WELLS  
FARGOWells Fargo Home Mortgage, Inc.  
Correspondence Resolution X2501-01T  
1 Home Campus  
Des Moines IA 50328

## Monthly Mortgage Statement

Customer Service  
(800) 288-3212Fax number  
(515) 237-7070TTY Deaf/Hard of Hearing  
(800) 934-9998Statement date  
06/07/00Loan number  
1235425Regular mail payments  
P.O. Box 7190  
Pasadena, CA 91109Overnight mail payments  
666 Walnut  
MAC N8200-044  
Des Moines, IA 50309#BWDXCT  
#4730001235425060#

024684

PATRICK RAY WEIL  
KERI LYNN WEIL  
7753 SOUTHLAND WAY  
SACRAMENTO CA 95828-8420

|||||

## Home loan facts

Property address  
7753 SOUTHLAND WAY  
SACRAMENTO CA 95828Principal balance as of 06/07/00  
\$108,733.95This is your principal balance  
only. For your pay off balance,  
please call Customer Service.

## Interest rate

7.625%

## Interest paid - year to date

\$3,376.87

## Escrow balance - year to date

\$480.54

## Taxes paid - year to date

\$636.18

## Important Messages

This statement is for  
informational purposes only. Our  
records indicate that your  
mortgage loan is protected by a  
bankruptcy plan. The attached  
coupon reflects the calendar due  
date, not the contractual due  
date of the bankruptcy plan. If  
you have any questions regarding  
your mortgage loan, please  
contact your bankruptcy attorney  
or our office at 1-800-274-7025.

## Payment due 07/01/00

Current payment	\$1,030.02
Overdue payment(s)	\$1,030.02
Unpaid late charges	\$ .00
Other charges	\$ .00
Total payment	\$2,080.04

## Activity Since Your Last Statement

Date	Description	Total	Principal	Interest	Escrow	Late charge	Misc
06/07	PMYNT THANK YOU	\$1,030.02	\$141.42	\$691.81	\$196.79		
06/02	PMI/PHA INS	\$43.42			\$43.42		

WELLS  
FARGOPATRICK RAY WEIL  
KERI LYNN WEIL  
7753 SOUTHLAND WAY  
SACRAMENTO CA 95828-8420

Please Include This Portion With Your Payment.

472

Loan Number: 1235425

Customer Service: (800) 288-3212

WELLS FARGO HOME MORTGAGE, INC.  
PO BOX 7190  
PASADENA CA 91109-7190

|||||

## PAYMENT COUPON

Next Payment Due Date 08/01/00  
Current payment \$1,030.02  
Overdue payment(s) \$1,030.02  
Unpaid late charges \$ .00  
Other charges \$ .00

Total payment \$2,080.04

Additional Principal \$  
Additional Escrow \$  
Other \$  
Total Enclosed \$After 07/18/00 Add Late Fee of \$41.20  
Total Due After 07/18/00: \$2,101.24

1235425010300201071228

101

06-23-00 10:16AM FROM LUCKY #198